

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

RICKY COOLEY,

Petitioner,

vs.

JAMES SALMONSON,

Respondent.

CV-18-11-BU-BMM

ORDER

Petitioner Ricky Cooley (Cooley) has filed an Amended Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 5). Cooley is a state prisoner proceeding *pro se*.

Cooley was arrested in Montana on July 2, 2017, for violations of Montana law. (*See* Doc. 1 at 1). Cooley had a pending “parole at large” warrant from the State of Louisiana at the time of his arrest. *Id.* Cooley entered into a plea agreement with the State of Montana. Cooley pleaded guilty to three counts of theft of a motor vehicle in Montana’s Second Judicial District Court, Butte-Silver Bow County. (*See* Doc. 5 at 2).

The state court sentenced Cooley on October 10, 2017. The state court committed Cooley to the Montana Department of Corrections (DOC) for a term of 10 years, with 5 years suspended. (*See* Doc. 5 at 2).

Cooley requested that the DOC place him in a drug treatment facility. DOC officials declined Cooley request given that he had a pending warrant from Louisiana. The DOC placed Cooley in the Montana State Prison. Cooley alleges that his placement at the Montana State Prison violates the spirit of his plea agreement and his rights under the United States Constitution. (Doc. 5 at 3).

United States Magistrate Judge Jeremiah C. Lynch issued Findings and Recommendations in this matter on February 27, 2018. (Doc. 7). Judge Lynch recommended that Cooley's Amended Petition be dismissed because Cooley had not yet exhausted his state court remedies. (Doc. 7 at 4-5). Cooley did not file objections to Judge Lynch's Findings and Recommendations.

The Court has reviewed Judge Lynch's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Lynch's Findings and Recommendations, and adopts them in full. A review of Cooley's Amended Petition reveals that he has not sought any appellate or collateral relief in the state courts. This Court cannot review Cooley's Amended Petition until he has exhausted his state court remedies. *See Rose v. Lundy*, 455 U.S. 509, 518-522 (1982).

Accordingly, IT IS ORDERED:

1. Cooley's Amended Petition (Doc. 5) is DISMISSED without prejudice

for failure to exhaust state court remedies.

2. A certificate of appealability is DENIED. Cooley has not made a substantial showing that he was deprived of a constitutional right. Reasonable jurists would agree that Cooley has failed to exhaust his state court remedies.

3. The Clerk is directed to enter judgment accordingly.

DATED this 26th day of March, 2018.



Brian Morris
United States District Court Judge